

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Law Office:

Examiner:

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In re:

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Assistant Commissioner for Trademarks,
2900 Crystal Drive, Arlington, VA 22202-3514-
on 1/12/05

Mark: KAPALUA

Reg. No.: 2,016,976

Applicant(s): INTERFASHION LTD. B.V.I.

RESPONSE TO POST-REGISTRATION OFFICE ACTION

January 10, 2005

Assistant Commission
for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

40,092

Reference is made to the Post-Registration Office Action dated July 12, 2004. Applicant has claimed excusable non-use because the trademark registration in question is currently involved in a cancellation proceeding at the Trademark Trial and Appeal Board.

Excusable non-use has not been found because, according to the Post-Registration Division, non-use of the mark appears to be within the control of the owner.

First, the filing of a Petition for Cancellation of the registrant's trademark registration is certainly outside of the control of the registrant. The Petition for Cancellation which has been filed alleges, among other things, that the continued use of



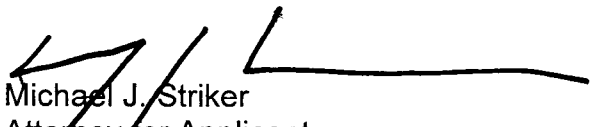
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registrant's mark is likely to cause confusion in the marketplace, and further that the petitioner in the Petition for Cancellation has rights with respect to the mark which are superior to those of the registrant.

In view thereof, continued use of the mark by the registrant could constitute infringement of another mark, all of which is well beyond the control of the registrant.

In view thereof, reconsideration of the refusal to accept the Declaration of Excusable Non-Use is respectfully requested.

Respectfully submitted,



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